

**WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION
ISSUED TO
TIRE RECYCLERS, INC.
CHARLES CITY, VIRGINIA**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Tire Recyclers, Inc. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.

6. “Tire Recyclers” means Tire Recyclers, Inc. located in Charles City County, Virginia.
7. “Facility” means the Tire Recyclers’s, Inc. facility located at 2640 Roxbury Road in Charles City County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “VSWMR” means the Virginia Solid Waste Management Regulations 9 VAC 20-80-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Tire Recyclers owns and operates a tire processing facility in Charles City County, Virginia. This facility is the subject of Permit By Rule No. 142 (Permit) which allows it to chip and bale waste tires for reuse.
2. On December 31, 2002, the Department conducted an inspection of the Facility. The inspection noted a number of violations of the VSWMR and the Permit. These violations include the following:
 - Failure to follow the operating plan as required by the Permit, specifically storage of tires outside the building.
 - Exceedence of the maximum height and width of piles stored outside and failure to maintain the required minimum separation between piles, as required by 9 VAC 29-80-670.
 - Failure to include in the operating plan; a rated capacity of the facility, the capacity of any waste storage areas, the expected daily quantity of waste residue generation, and the ultimate disposal location for all facility generated waste residue.
 - The operating plan’s disclosure statement was not revised to reflect a change in key personnel.
 - The facility was operating without a Class I operator during the time of the inspection.
 - The facility failed to update the closure cost estimate and the financial assurance mechanism.
 - The facility failed to establish a stand by trust for the surety bond as required by 9 VAC 20-70-160. H.
3. On March 12, 2003, a Notice of Violation was issued for the above violations.
4. On March 28, 2003, and August 6, 2003, meetings were held to discuss the violations cited in the NOV, the progress made and actions to be taken to bring the facility back into compliance.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455 orders Tire Recyclers, and Tire Recyclers agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Tire Recyclers and Tire Recyclers voluntarily agrees, to pay a civil charge of \$11,550 within 180 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Tire Recyclers, for good cause shown by Tire Recyclers, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Tire Recyclers by DEQ on March 12, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Tire Recyclers admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Tire Recyclers consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tire Recyclers declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2.-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Tire Recyclers to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tire Recyclers shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Tire Recyclers shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tire Recyclers shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tire Recyclers. Notwithstanding the foregoing, Tire Recyclers agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Tire Recyclers. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tire Recyclers from its obligation to comply with any statute,

regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Tire Recyclers voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Tire Recyclers voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2003, by _____, who is the
(name)

_____ of Tire Recyclers, on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

SCHEDULE OF COMPLIANCE

Tire Recyclers shall:

1. Tire Recyclers shall not own, operate, construct, or modify any solid waste facility within the Commonwealth except in accordance with the Waste Management Act, the VSWMR, a permit issued by the Director, or an Order of the Board.
2. Tire Recyclers shall process and/or remove all tires and processed material stored outside the facility no later than November 30, 2003. The Department shall be notified in writing when the last outside tire has been removed.
3. As an interim requirement, at least 100,000 tires that are being stored uncovered outside as of August 1, 2003, shall be processed and removed from the site no later than October 31, 2003. On November 1, 2003, the Department shall be notified in writing of the specific number of outside tires that have been removed from the site since August 1, 2003.
4. Tire Recyclers shall contract with a third party no later than September 12, 2003, to assist in the processing of all waste tires stored outside. This contract(s) shall ensure sufficient resources are available to meet the milestones in this Order. A copy of all contract(s) with third parties assisting in the processing of waste tires shall be faxed to the Department at (804) 527-5106 no later than 2 days after the execution of the contract.
5. Tire Recyclers shall submit a revised operating plan meeting the requirements of 9 VAC 20-80-360. D. within 30 days from the date of execution of this Order. When addressing capacity and storage as per 9 VAC 20-80-360. D. 3. the operating plan must detail how the provisions of 9 VAC 20-80-670 will be met.
6. Tire Recyclers shall submit for approval within 30 days of issuance of this Order, an updated contingency plan meeting the requirements of 9 VAC 20-80-360.D.4.
7. Tire Recyclers shall submit within 30 days from the date of execution of this Order an updated financial assurance mechanism which meets the requirements of 9 VAC 20-70-10 *et seq.* The amount of Financial Assurance must be based on the maximum amount of unprocessed tires stored on site at any time.
8. Tire Recyclers shall provide to DEQ by the 10th of each month starting in the month of September 2003, a status report on the removal progress of all the tires stored outside. Individual accounting by tire type shall be included in the report. This status report shall continue until all tires stored outside of the building have been removed.